

### **REMARKS/ARGUMENTS**

The Final Office Action of August 9, 2006 has been carefully reviewed and this paper and RCE are Applicants' response thereto. Claims 1 - 37 remain pending in the application. Claims 1-19 and 21-37 were rejected under 35 U.S.C. § 102(c) as being anticipated by U.S. Pub. No. 2002/0013612 to Whitehurst (Whitehurst). Claims 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Whitehurst in view of U.S. Pub. No. 2002/0013613 to Haller *et al.* (Haller). In response, Applicants respectfully traverse the rejections in view of the above amendments and the remarks that follow.

#### **Amendments to the Claims**

Claim 1 was amended to recite "wherein the implantable component is configured to operate with the first treatment therapy mode when the external component is decoupled from the communications channel and to automatically switch to the second treatment therapy mode when the external component is coupled to the communications channel." To the extent this was not inherent in the claim as originally drafted, support is at least found in the specification as filed, pg. 60, ¶ 183, thus no new matter was added.

Claim 11 was amended to recite "if the external component and the implantable component are coupled, automatically switching to a second treatment therapy mode with the external component in accordance with the data." To the extent this was not inherent in the claim as originally drafted, support is at least found in the specification as filed, pg. 60, ¶ 183, thus no new matter was added.

Claim 13 was amended to recite "if the external component and the implantable component are coupled, automatically switching to a second treatment therapy mode with the external component in accordance with the data." To the extent this was not inherent in the claim as originally drafted, support is at least found in the specification as filed, pg. 60, ¶ 183, thus no new matter was added.

Claim 37 was amended to recite "if the external component and the implantable component are decoupled, automatically switching the operation of the medical device system to the open-loop mode of the treatment therapy" and "if the external component and the implantable component are decoupled, automatically switching the medical device system to the

open-loop mode of the treatment therapy.” Claim 37 was also amended to correct an apparent informality (the repetition of a phrase in the preamble). To the extent the amendments were not inherent in claim 37 as originally drafted, support is at least found in the specification as filed, pg. 60, ¶ 183, thus no new matter was added.

**Rejection under 35 U.S.C. §102 and § 103 – Whitehurst**

Claims 1-19 and 21-37 were rejected under 35 U.S.C. § 102(e) as being anticipated by Whitehurst. Claim 20 was rejected under 35 U.S.C. § 103 as being unpatentable over Whitehurst in view of Haller. Thus, all pending claims were rejected based on Whitehurst, alone or in combination with Haller. Claims 1, 11, 13 and 37 are independent.

The Office Action suggested that switching was not recited in the claims as filed and maintained the rejection of the claims based on Whitehurst. While not agreeing with the construction provide in the Office Action, to advance prosecution Applicants have amended the independent claims so that they expressly recite the feature of automatically switching. For example, claim 1 now recites “wherein the implantable component is configured to operate with the first treatment therapy mode when the external component is decoupled from the communications channel and to automatically switch to the second treatment therapy mode when the external component is coupled to the communications channel.” Applicants respectfully submit that Whitehurst fails to disclose this feature.

Claims 11, 13 and 37 have also been amended to recite features similar to the above feature of claim 1, thus Whitehurst also fails to disclose at least one feature of each of the dependent claims. Accordingly, Whitehurst cannot be said to anticipate claims 1, 11, 13 and 37.

Claims 2-10, 12, 14-19 and 21-36 depend from claims 1, 11, and 13. Therefore, claims 2-10, 12, 14-19 and 21-36 are not anticipated for at least the reason that claims 1, 11, and 13 are not anticipated and for the additional features recited therein.

Accordingly, withdrawal of the rejection based on 35 U.S.C. § 102 is respectfully requested.

Claim 20 is based on claim 13, which as noted above, includes at least one feature not disclosed by Whitehurst. Applicants note that Haller does not appear to be capable of correcting the above noted deficiency of Whitehurst. Therefore, the combination of Whitehurst and Haller

fail to disclose all the features of claim 20. Thus, the combination of Whitehurst and Haller fail to support a *prima facie* case of obviousness with respect to claim 20.

Accordingly, withdrawal of this ground of rejection is also respectfully requested.

### **CONCLUSION**

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

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